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TO RUEHC/SECSTATE WASHDC PRIORITY 6683
INFO RUCNCIS/CIS COLLECTIVE PRIORITY
RUEHAK/AMEMBASSY ANKARA PRIORITY 1382
RUEHIT/AMCONSUL ISTANBUL PRIORITY 0609
RUEHLMC/MILLENIUM CHALLENGE CORPORATION WASHINGTON DC
RUEHNO/USMISSION USNATO 0460

UNCLAS SECTION 01 OF 06 YEREVAN 001384

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E.O.12958: N/A
TAGS: [PGOV](#) [PHUM](#) [PREL](#) [KDEM](#) [KJUS](#) [AM](#)
SUBJECT: MIXED, LARGELY SANGUINE REACTIONS TO ARMENIA'S ELECTORAL
CODE CHANGES

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SUMMARY

¶1. (SBU) With the presidential election set for February, parliament swiftly enacted electoral code changes that took effect November 20. Over the course of two day-long readings, the parliament amended almost one third of the articles of Armenia's electoral code. IFES and other election monitoring bodies told Emboffs that the amendments contain both positive and disconcerting elements. As IFES and local observer groups had advocated, the parliament eliminated a proposed amendment that would have placed limitations on international and domestic election observation missions. Ex-president and now current presidential contender Levon Ter-Petrossian saw his recent vocal bid to include two anti-vote fraud amendments testily rejected by the head of the Central Electoral Commission. End summary.

MAJOR CHANGES TO ELECTORAL CODE

¶2. (U) Major changes to the electoral code include abolishing of presidential nominations by multi-party blocs or by civic initiative (signature collection); temporarily allowing voters to vote in the area where they physically reside (instead of only at their officially registered address); stamping of voters' passports; changing polling stations' layout for greater voter privacy; and requiring only one interim financial report by candidates 10 days after the beginning of the electoral campaign (two reports had been proposed in the first reading). The parliament eliminated a proposed amendment from the first reading that would have prevented Armenian citizens from registering as foreign observers, and foreigners from registering as local observers.

1/3 OF ELECTORAL CODE AMENDED IN ONLY TWO READINGS

¶3. (U) On November 5 the Armenian parliament passed in its first reading legislation to amend 47 of the 141 articles making up the electoral code. The ruling Republican Party of Armenia, and its coalition partner, Prosperous Armenia, drafted the amendments, aided by input from international organizations (the USAID-funded IFES project on electoral assistance, the Organization of Security and Cooperation in Europe, and ABA/CEELI) as well as the country's Central Electoral Commission (CEC) and local NGOs such as "It's Your

Choice." In its second and final reading on November 16, parliament adopted (by the tally of 86 yes, 0 no, and 11 abstentions) 45 amendments to the code, which President Kocharian signed into law on November 20.

14. (SBU) The content of the amendments had been the source of months of speculation, dating back to the May 2007 parliamentary elections.

The OSCE stated that while those elections "demonstrated improvement" over previous polls and "generally met international standards," significant shortcomings still existed, notably in campaign regulation and performance of election commissions during vote counts. The OSCE also noted as problems the blurring of the ruling party with the government; the elections complaints and appeals process (due to inconsistencies in Armenia's legal framework); and the lack of sanctions for election violations. According to Tigran Torosian, speaker of the parliament, the aim of the newly enacted amendments is to eliminate shortcomings encountered during the May parliamentary elections.

MIXED THOUGH LARGELY SANGUINE REACTIONS TO AMENDMENTS

15. (SBU) Most of the opposition's attention on the changes has been focused on the amendment that abolishes the nomination of presidential candidates by multi-party blocs or civic initiative (signature collection). From now on, only political parties or candidates themselves can nominate a candidate, while party blocs or unregistered coalitions cannot. (Comment: The point here is that no more than one party name can appear next to each candidate's name on the ballot paper whereas a candidate who had successfully rallied a broad opposition coalition to support him would prefer to be listed as the chosen nominee of all of these opposition parties, with each party name enumerated on the ballots. This amounts to a small blow against opposition unity. End comment.)

16. (U) Others expressed concerns about the proposal to double the election registration deposit by a presidential candidate from 5

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million drams (approximately USD 15,600) to 10 million, and raise the limit of maximum election spending by a candidate from 70 million drams (USD 220,000) to 140 million. While the government would return the election deposit to candidates who receive over five percent of the vote, critics protested the financial impediment to poorly-funded candidates. In the end, the parliament lowered the deposit amount to 8 million drams (approximately USD 25,000) and kept the maximum spending limit by presidential candidates to 70 million drams.

IFES, OTHERS SEES PROS, CONS IN AMENDMENTS

17. (SBU) IFES, a USAID grantee that provides technical assistance on election processes, has worked closely with the authorities on reforming the electoral code, and had proposed 17 short-term changes, as well as a mix of medium and long-term changes for after the election. Its country director, Chedomir Flego, told poloff November 8 that he was pleased to see ten of IFES' proposed amendments in the first reading, but was caught off guard by the total number of tabled amendments. Flego cautioned that some of these changes warranted a serious discussion that the short time frame before the election did not permit. He also expressed concern over Armenian authorities' tendency before elections to "bulldoze" controversial changes into law.

18. (SBU) IFES characterized the following changes to the electoral code as disconcerting or positive, and flagged issues that should have been addressed but were not (see paragraph 9 for a more detailed discussion of these points):

A) Disconcerting:

- Continued functioning of electoral commissions when some members terminate their participation early (seen as anti-opposition);

- Stamping of ballot envelope and voter's passport by polling officer responsible for the ballot box.

B) Positive/benign:

- A temporary measure allowing voter registration at physical place of habitation instead of at legally registered residence (IFES had wanted to see this made permanent);
- Removing the initially proposed amendment that would have prevented Armenian citizens from registering as foreign observers, and foreign citizens from registering as local observers;
- A measure that allows the Central Election Commission (CEC) to receive from the appropriate government agency, at ten and three days prior to an election, an updated number of voters per electoral district and precinct (this will facilitate a more accurate allotment of ballot papers and voting envelopes provided to Precinct Electoral Commissions);
- CEC will now be able to regulate paid political advertising aired on public television and radio. Before, CEC could only regulate free political advertising aired on public radio and television (CEC will be able to limit any one candidate seeking to purchase disproportionate airtime);
- Several campaign finance amendments: a) one required an interim financial report ten days after the beginning of the electoral campaign that candidates themselves must now submit in addition to parties and party alliances (IFES had pushed for two interim reports at 15 and 5 days before the election, and had wished they contained more detailed reporting than the amendment calls for); b) three days provided for a CEC-appointed Audit Service to check candidates' campaign finances before forwarding them to the CEC for discussion;
- Discontinuing the counting of ballot envelopes.

C) Amendments/issues that IFES thought should have been included but were omitted or removed after the readings:

- Reporting of third party financial contributions to campaigns;
- Increasing a) the audit report period, i.e., the time period for checking declarations of candidates' campaign finances and b) the time of the Audit Service's operational authority, from 20 and 45 days following the announcement of election results, to 45 and 60 days respectively;

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- Definition of campaign finance;
- Addressing the lack of campaign finance sanctions;
- Addressing the lack of consistency between the Electoral Code and other Armenian legal statutes.

19. (SBU) A more thorough analysis of IFES's views on certain points follows.

A) Disconcerting:

- Stamping voters' passports before they are allowed to deposit their ballot envelopes in the ballot box: This measure is in one sense welcome as an attempt to deter multiple voting by an individual voter, however the measure has its critics. The Council of Europe's Venice Commission opposes stamping of passports/identification documents that disclose whether citizens vote. For instance, citizens may (theoretically) subsequently be discriminated against when receiving social benefits depending on whether or not they voted. (Comment: According to IFES, the Republican and Prosperous Armenia parties were initially against the amendment, but withdrew their objection to placate the Dashnak party, their coalition partner. End comment.) Also, on technical grounds, it would have made more sense if voters were

checked/stamped by the registering polling officer prior to the issuance of the ballot. Opposition parties (most notably former President Ter-Petrosian) had called for finger-inking; though IFES opposes finger-inking as unreliable and creating a false sense of security, since chemicals are readily available that can instantly remove finger ink.

- Electoral Commission Members Early Termination: Amendment could be used against commission members appointed by opposition parties. It allows the election commissions to continue their work until the number of commission members drops to five in case of early termination of other commission members. There is a fear that this amendment might be misused by ruling parties to dominate elections commission work during elections if they somehow get rid of commission members appointed by opposition parties (through political pressure or bribes). (Comment: There is some reasoning behind the provision, however, given the opposition's past history of boycotting election commissions' work, although this did not happen in May 2007. End Comment.)

B) Positive/benign:

- Place of voter registration: This was a potential cause of fraud in past elections. The difficulty of changing one's permanent address registration (or "propiska," which is a Soviet-legacy registration practice), as well as the high number of registered voters who have emigrated to Russia has meant that the voters' lists contained perhaps 300,000 voters who could be counted on not to show up on Election Day. This amendment would at least fix the problem for Armenians still residing in the country (most often those who have moved to Yerevan from outlying districts), allowing people to temporarily remove themselves from the voting list of their permanently registered address so they can vote in the communities where they actually reside. IFES says the only shortfall is that it is a temporary provision, and that it should be made permanent. Also, there is no permanent provision ensuring that the temporary removal of names from voting lists, and additions to those that are gaining new voters, would be made public. (Note: Republican Party board member Samvel Nikoyan, a key proponent of the amendments, has publicly stated that the amended voting lists would be made public. End note.)

- Discontinuing the counting of ballot envelopes: Envelope counting had been a burdensome and time-consuming requirement for fatigued poll workers to complete after close of polls. IFES said this practice did not make sense, that counting ballots was more important. In the past, electoral commissions could disqualify a ballot if the envelope was damaged (even if the ballot's integrity remained).

- New restriction on observers was deleted after the first reading: The CEC had apparently copied verbatim an OSCE recommendation - contained in the OSCE/OHDIR Election Observation Mission Report on Armenia's May 2007 parliamentary elections - that excludes local staff of international organizations from observation. According to this draft amendment, a local staff person could not be accredited as an international observer, nor could he apply to be a local observer under that same organization, because the organization for which s/he works is registered as an international organization in Armenia. Flego was surprised and chagrined this restriction showed

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up in an OSCE document. He felt the restriction's intent was to limit observation and control the composition of the observer groups so critics could be preemptively weeded out. Flego said he personally pleaded with Republican Party board member Samvel Nikoyan and parliament's State and Legal Affairs Committee Chairman David Harutyunyan for this provision to be dropped. He said Nikoyan had been very encouraging about getting this provision deleted, which was borne out in the second reading when the provision was removed altogether. This issue was also a particular concern for the domestic observer group "It's Your Choice," a USAID grantee which utilized Diasporan Armenians as observers. (Comment: We were less exercised than IFES or IYC about the significance of this point, in the great scheme of Armenian democracy, but it is nice that IFES chalked up a win. End comment.)

- Campaign finance amendments: Candidates will now have to furnish one interim financial report on their campaign expenditures ten days after the election campaign begins. Previously, only political parties or political blocs had to submit the reports. Also, IFES unsuccessfully pushed to get more time after the elections (45 days instead of 20) for the Audit Service, which is appointed by the CEC for the elections, to assess candidates' financial campaign documents, and 60 days (vice 45) to exercise its oversight authority. Flego said requirements for even more detailed expenditure reporting are still missing, however.

- Nominations for presidential election changed from civic initiative to self-nomination (party nomination retained): IFES says this measure will actually allow more individuals to run for president, and that nominees will still be able (after nominating themselves) to refer to the political bloc that supports them.

- Voter lists : They are in much better shape since the police took over their administration in 2005. IFES has worked with the receptive deputy chief of police to eliminate duplicate names and the names of deceased to avoid voting fraud. Previously, local communities prepared voter lists, which resulted in multiple registrations and sporadic updating, as well as the potential for deliberate administrative chicanery at the municipal level. Now that the system is centralized, with better links between the relevant authorities and databases, there has been greater and more regular information exchanged. A major issue remains, however, in access to the list for the public and political parties. Flego said acquiring the lists is still difficult -- they are posted only on the web twice a year, and public oversight is the loser.

C) Amendments/issues that should have been included:

- Third party reporting of financial contributions to campaigns: IFES says there is no definition of third parties in Armenian law as relates to elections, thus the government cannot begin to regulate this issue. This is a problem, because powerful businessmen and oligarchs can contribute significant resources to campaigns without any public oversight. (Comment: We differed with IFES on whether it was ever realistic to address such a complex and far-reaching issue as campaign finance reform during this short season between the parliamentary and presidential elections. These issues can be taken up as longer-term reforms after February. End comment.)

- Definition of campaign finance: There as yet exists no clear definition of what constitutes legal/illegal campaign finance. This situation fosters a system of abuse and corruption that tarnishes the legitimacy of elections.

- Addressing the lack of campaign finance sanctions: Currently there are no clearly defined sanctions for candidates or parties that violate election rules. This environment results in political campaigns that act with impunity.

- Addressing the lack of consistency between the Electoral Code and other Armenian legal statutes: There are no clear guidelines on which legal entity has jurisdiction on election-related crimes. With a criminal code, an electoral code and a code on administrative violations, the legal framework does not offer quick, efficient recourse for investigating and adjudicating violations. IFES says that after the May parliamentary elections political parties went to the wrong courts to pursue their complaints, or didn't exhaust all of the legal rights available to them.

----- OSCE AND "IT'S YOUR CHOICE" ON THE CHANGES -----

110. (SBU) Emboffs spoke with Harutyun Hambardzumyan, the director of "It's Your Choice," a USG grantee local NGO that has also worked on

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the electoral code reforms. Hambardzumyan said on November 21 that he saw both good as well as "ineffectual" amendments in the adopted changes. He said some new amendments simply removed what had been

introduced in January 2007, (in the run-up to the May parliamentary elections). He also took offense to the parliament's swift introduction and passage of the amendments without first having a public debate on them. That said, he found the passport stamp a positive anti-fraud measure to deter multiple voting by individuals.

He said the introduction of this into the Armenian military last May prevented soldiers from voting multiple times, as he alleged they did in the past.

¶11. (SBU) He also was upbeat about the amendment that moves the voting booth at polling places so voters' backs will be toward a wall instead of toward polling personnel and other people in attendance. This, he said, will give voters much more privacy and help protect the integrity of the vote by orienting the voting booth partition to obstruct unwanted observation. He also saluted the amendment that specifies simplified procedures for vote count and protocol tabulations that he thinks will deter unlawful vote tabulations. Polfsn also spoke with Ruzanna Baghdasaryan, the OSCE officer in Yerevan in charge of elections, who assessed the changes as being positive overall. She admitted, however, that "some things" are still not completely solved. She disagreed with Hambardzumyan on the merits of passport stamping, calling it useless, and a tactic to throw "dust in the eyes" of the opposition.

She said corrupt polling place officials could get around this by simply not stamping the passport (thereby allowing the person to vote again), or would conveniently not see the stamp of someone who had already voted (though of course this latter scenario would leave passports double-stamped, a trail of evidence that might leave the bearer uncomfortable).

PUBLIC SPAT BETWEEN LTP AND CEC HEAD

¶12. (SBU) While most opposition parties have spoken out against the elimination of presidential nomination by political blocs, ex-President and current presidential candidate Levon Ter-Petrossian (LTP) has focused his attention on adopting two key anti-fraud measures: the printing of ballots abroad, and inking voters' fingers after voting. In the second political rally LTP held on November 16, he claimed that the May parliamentary elections were the "most disgraceful in Armenia's history" because of the "ingenuity" he claims the authorities used to falsify the vote. LTP also declared that Western-led monitoring of the presidential vote will be "meaningless" if the National Assembly did not pass his proposed amendments. LTP shared these concerns with six European Ambassadors and Peter Semneby, the EU's special representative to the South Caucasus, at a lunch the ambassadors hosted for LTP on November 20.

¶13. (SBU) LTP's anti-fraud proposals elicited a sharp retort from Garegin Azarian, chairman of the Central Election Commission, who alleged that the ex-president himself had rigged elections while in power. Azarian stated that LTP "had better address his suggestions to election falsifiers in his entourage." Azarian's remarks elicited a stern rebuke from another political figure, the leader of the small opposition party with which Azarian was affiliated until 2002. RFE/RL quoted Petros Makeyan, leader of the pro-LTP Democratic Fatherland Party, as saying Azarian, who headed a precinct election commission in Yerevan during parliamentary and presidential elections held in 1995 and 1996, had never - at the time Azarian was directly involved - alleged vote rigging during Ter-Petrossian's rule. Azarian also allegedly told Makeyan in 1998 that Robert Kocharian's election as president was fraudulent. According to Makeyan, Azarian "was the one who showed how ballots were stuffed in Robert Kocharian's favor." A CEC spokeswoman responded to Makeyan's charges by saying Azarian would comment on them in the future.

COMMENT

¶14. (SBU) As expected, changes to Armenia's electoral code three months before a contested presidential election have resulted in minor, tit-for-tat exchanges between the ruling parties that proposed them, and opposition factions that had no real say. While room for considerable improvement remains, particularly in campaign finance, many of the practical changes respond to deficiencies

highlighted by the parliamentary elections, and represent steps in the right direction. We were surprised, but encouraged, that the package moved so expediently through parliament, given the very short time before the presidential election, the challenges of

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drafting revised implementing regulations, and training election workers on the changes. On balance, the current package of reforms (though less than our more absolutist friends in IFES might wish) looks like a good thing.

PENNINGTON